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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,103	10/22/2003	Russell Reeve	9062-27	4763

7590 01/17/2007
Julie H. Richardson
Myers Bigel Sibley & Sajovec, P.A.
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Raleigh, NC 27627

EXAMINER

BARAN, MARY C

ART UNIT	PAPER NUMBER
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2857

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/691,103

Applicant(s)

REEVE ET AL.

Examiner

Mary Kate B. Baran

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 and 23-32 is/are allowed.
- 6) ☒ Claim(s) 1-19, 21, 22 and 33-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The action is responsive to the Amendment filed on 1 November 2006. Claims 1-45 are pending. Claims 14, 18-20, 23 and 32 are amended. Claims 40-45 are new.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 40-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 40-45 recite the limitation "providing data to a clinician or user"; however, it is not clear which data is being presented to the user

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-19, 21, 22 and 33-39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are directed to a judicial exception; as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106), the claims must have either

physical transformation and/or a useful, concrete and tangible result. The claims fail to include transformation from one physical state to another. Although, the claims appear useful and concrete, there does not appear to be a tangible result claimed. Merely computing or generating would not appear to be sufficient to constitute a tangible result, since the outcome of the computing or generating step has not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible.

Allowable Subject Matter

4. Claims 20 and 23-32 are allowed.

5. The following is a statement of reasons for the indication of allowable subject matter:

Claims 20 and 32 are allowable over the prior art because a computer program product for deconvolving the spectral contribution of a plurality of closely correlated constituents in a composite signal, the computer program product comprising: computer readable program code for rotating the design matrix; computer readable code that generates a reduced design matrix; computer readable program code that computer regression fit weighting coefficients based on the design matrix, the reduced matrix, and the composite matrix to thereby deconvolve the spectral contribution of at least one non-target variable across the spectrum of interest in the composite signal; and

computer readable code that iteratively repeats a sequential least squares regression model using the design matrix, the reduced design matrix, and the composite matrix until selected target constituents of interest have been assigned non-negative weighting factors such that a sequential least squares statistical evaluation produces a non-negative solution set therefore, is not found, taught or suggested in the prior art of record.

Claims 23-31 are allowable over the prior art because a method of deconvolving a complex signal to evaluate an in vitro biosample, comprising: rotating a design matrix; generating a reduced design matrix of principal component data by selectively excluding principal components that do not improve the estimation of the target constituents in the composite signal; deriving regression fit weighting coefficients for the selected target constituents in the composite signal; and generating a calculated composite lineshape for the sample, the calculated lineshape being calculated based on the derived weighting coefficients of respective constituent reference spectrums of constituents potentially present in the sample, is not found, taught or suggested in the prior art of record.

Response to Arguments

6. Applicant's arguments filed 1 November 2006 have been fully considered but they are not persuasive.

Applicant argues that the claims identify the presence or level of a constituent in a target sample, and that this practical application produces a concrete, useful and

tangible result. However, Applicant's arguments are not well taken. While the presence or level of a constituent in a target sample is identified, this result is not output to a user or used to control a process. Therefore, a concrete, useful and tangible result has not been produced.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Kate B. Baran whose telephone number is (571)

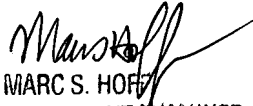
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272-2211. The examiner can normally be reached on Monday - Friday from 9:00 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571) 272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

6 January 2007


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800